IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 35156 of 2004(I)

OS.494/1983 of PRINCIPAL SUB COURT, PALAKKAD
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PETITIONERS:
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1. RADHAMMA, W/O.LATE SUBBARAMA SASTRIGAL, EASWARAPATTAR VILLAGE, KAVASSERI AMSOM, ALATHUR TALUK.

2. K.SPARAMESWARAN, S/O. RADHAMMA, EASWARAPATTAR VILLAGE, KAVASSERI AMSOM, ALATHUR TALUK.

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS:

K.L.PARAMESWARAN @ K.L.KUMAR, S/O. K.P.LAKSHMINARAYANAN, `SHANTHA NILAYAM', INDRA NAGAR, BANGALORE.

BY ADV. SRI.A.P.CHANDRASEKHARAN (SR.)
SMT.PRABHA R.MENON
SRI.M.KRISHNAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 35156/2004 I

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE A.S. NO. 527/89 DT. 7/3/03 BY THIS COURT.

EXT.P2. COPY OF THE ORDER DT. 27/3/2003 IN RP NO. 236/03.

EXT.P3. COPY OF THE AFFIDAVIT IN SUPPORT OF IA NO. 3081/2004.

EXT.P4. COPY OF THE COUNTER STATEMENT DT. 7/10/2004.

EXT.P5. COPY OF THE ORDER T. 21/10/2004 IN IA NO. 3081/2004.

True copy

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 35156 OF 2004

Dated this the 22nd day of June, 2007

JUDGMENT

Ext.P5 order passed by the learned Subordinate Judge on an application filed by the defendant-respondent to compel the writ petitioners who were legal representatives of the first defendant in a suit for partition to produce the title documents relating to A schedule property is under challenge. In answering the application, the petitioner contended firstly that they are not in possession of the documents, secondly that the prayer is vague and thirdly that the prayers are beyond the scope of remand order. I am of the view that there is no need to be concerned about the second and third contentions. But the first contention was somewhat serious. The first contention was that the petitioners who were the legal representatives of the original first defendant were not in possession of the documents which were sought to be produced by them.

Mr.Krishnakumar, counsel for the respondent submits that the first defendant, the father of the petitioners' admitted in an earlier IA, IA No.2872 of 1988, that the documents were in his custody. If that is correct, the petitioners who were the legal representatives of the original first defendant, were in custody of the original documents. I cannot

agree. It is equally probable that the original has not come into the petitioner's custody. After all, the documents are public documents and certified copy of these documents are available. If an application for production of documents is filed and if it is seen that the parties is not producing documents which is in the custody of the party, the maximum that can be done is to draw adverse inferences. Whether such inferences should be drawn in this case is to be decided by the court later at the time of evaluation of totality of the evidence in this case including circumstantial evidence. Under these circumstances, I set aside Ext.P5 and direct the court below to grant reasonable time to the respondent-plaintiff for producing certified copies of the documents referred to in Ext.P5. The court below will take a decision on the question whether adverse inference is liable to be drawn against the petitioners only after evaluating the entire evidence.

PIUS C. KURIAKOSE, JUDGE

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